

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/539,220	First Named Inventor: Heron <i>et al.</i>
Filing Date: June 17, 2005	Attorney Docket No.: 100938-1P US
Examiner: Tamthorn Ngo Truong	Group Art Unit: 1624
Customer No.: 44992	Confirmation No.: 4585
Title: Phosphonoxy Quinazoline Derivatives and their Pharmaceutical Use	

Mail Stop Petitions
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

**PETITION TO REQUEST FOR RECONSIDERATION OF THE PATENT TERM
 ADJUSTMENT INDICATED IN THE NOTICE OF ALLOWANCE UNDER 35 USC
 154(b) AND 37 CFR 1.705**

Sir:

Applicants hereby request that the Patent Term Adjustment (PTA) for the above-identified application be reconsidered. Applicants believe that the PTA of 620 days for the above application is incorrect and that the PTA to which Applicants are entitled is 963 days (if the patent issues on the Tuesday before the date that is 28 weeks after the mailing date of the Notice. This request is being submitted simultaneously with the payment of the issue fee and is therefore timely.

A petition fee under 37 CFR Section 1.18(e) is included herewith.
 This patent is not subject to a terminal disclaimer.

PATENT TERM ADJUSTMENT (PTA) CALCULATIONS

A review of the Patent Term Adjustment History in the PAIR system shows that the United States Patent and Trademark Office (PTO) calculated the PTA (copy attached herein as page 4 and incorporated by reference) as follows:

1) The PTO mailed a delayed first action on 28 April, 2008, thereby according a PTO Delay of 620 days 35 USC 154(b)(1)(A). Applicants do not dispute this calculation.

THE PTO HAS FAILED TO AFFORD PTA UNDER 35 USC 154(b)(1)(B) FOR PTO DELAY

2) The actual filing date of the Application is June 17, 2005. Under 154 (b)(1)(B)

[I]f the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the **actual filing date of the application** in the United States, not including— (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); . . . the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. (emphasis added)

June 17, 2008 is three years from the actual filing date. If the patent issues on the Tuesday before 28 weeks after the mailing of the notice of allowance (June 2, 2009), then an additional 343 days of PTA are due for PTO Delay, i.e., 963 (620 plus 343) additional delay days are due to the Applicants under 154(b)(1)(B).

3) In anticipation that the Director may argue that any of the times provided herein overlap under 35 USC 154 (b)(1)(A) and 154(b)(1)(B), the Director is pointed to the United States District Court For The District of Columbia decision in WYETH v. DUDAS Civil Action No. 07-1492 (2008) regarding the interpretation of overlapping time. The court determined that periods of delay “overlap” only if the delays “occur on the same day.”

Conclusion

The Applicant requests a total of 963 days of PTA:

620 days under 35 USC 154(b)(1)(A) (see point 1) and

plus 343 days under 35 USC154 (b)(1)(B), (see points 2 and 3).

The Commissioner is hereby authorized to charge the \$200 fee required under 37 CFR § 1.18(e) and any deficiency in the fees or credit any overpayment to deposit account No. 50-3231, referencing Attorney Docket No. 100938-1P US.

Respectfully submitted,
/Jacob G. Weintraub/

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Patent Term Adjustment

Filing or 371(c) Date:	06-17-2005	USPTO Delay (PTO) Delay (days):	620
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	0
Post-Issue Petitions (days):	+0	Total Patent Term Adjustment (days):	620
USPTO Adjustment (days):	+0	Explanation Of Calculations <input type="checkbox"/>	

Patent Term Adjustment History				
Date	Contents Description	PTO(Days)	APPL(Days)	
11-13-2008	Mail Notice of Allowance			
11-10-2008	Document Verification			
11-10-2008	Examiner's Amendment Communication			
11-10-2008	Notice of Allowance Data Verification Completed			
11-10-2008	Case Docketed to Examiner in GAU			
09-10-2008	Date Forwarded to Examiner			
07-28-2008	Response after Non-Final Action			
04-28-2008	Mail Non-Final Rejection	620		
04-26-2008	Non-Final Rejection	⬆		
10-04-2005	Information Disclosure Statement considered	⬆		
02-15-2008	Information Disclosure Statement considered	⬆		
02-15-2008	Information Disclosure Statement (IDS) Filed	⬆		
02-17-2006	Cleared by OIPE CSR	⬆		
02-17-2006	Cleared by OIPE CSR	⬆		
02-09-2006	IFW TSS Processing by Tech Center Complete	⬆		
02-09-2006	Case Docketed to Examiner In GAU	⬆		
10-04-2005	Information Disclosure Statement (IDS) Filed	⬆		
10-04-2005	Information Disclosure Statement (IDS) Filed	⬆		
06-17-2005	Request for Foreign Priority (Priority Papers May Be Included)	⬆		
06-17-2005	Request for Foreign Priority (Priority Papers May Be Included)	⬆		
06-17-2005	Preliminary Amendment	⬆		
06-24-2005	371 Completion Date	⬆		
02-07-2006	Application Dispatched from OIPE	⬆		
02-07-2006	Notice of DO/EO Acceptance Mailed	⬆		
06-17-2005	Initial Exam Team nn	⬆		